

STATE OF MICHIGAN
COURT OF APPEALS

OCWEN FEDERAL BANK, FSB, a foreign
banking corporation,

Plaintiff-Appellee,

v

INTERNATIONAL CHRISTIAN MUSIC
MINISTRY, INC. d/b/a LATE NIGHT PRAISE
AND WORSHIP, and PERCY L. LEWIS,

Defendants-Appellants.

UNPUBLISHED
October 6, 2005

No. 249081
St. Clair Circuit Court
LC No. 01-003301-CH

ON REMAND

Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

PER CURIAM.

In an unpublished, per curiam opinion issued July 8, 2004, this panel reversed the trial court's order granting plaintiff summary disposition in this property dispute. In a June 2, 2005 order, the Supreme Court reversed the judgment of this Court and remanded the case for consideration of defendants' remaining claims. After review of defendants' remaining claims, we affirm.

I. FACTS

This case involved actions in both Wayne County and St. Clair County to determine rights to property that had been conveyed multiple times between connected parties. The Wayne County case was a breach of contract action between International Christian Music Ministry (ICMM), and Unity Community, in which ICMM sought damages for the breach of contracts for advertising and television commercials. When Unity Community failed to make payments required by a consent judgment, ICMM filed a motion to convey real estate, asserting that Unity Community was fraudulently stripping itself of assets by conveying the property to its president and his wife. In an April 13, 2000 order, the Wayne Circuit Court conveyed the property to ICMM and its attorney, Percy Lewis.

Plaintiff held a mortgage on the property, but was not a party to the Wayne County action. It learned of defendants' interest in the property when it attempted to recover the property after a foreclosure and mortgage sale. Plaintiff brought this quiet title action in St. Clair County, where the property was located. Plaintiff moved for summary disposition, and defendants argued that the St. Clair court could not set aside the Wayne County conveyance

under MCR 2.613(B), and that the 1993 deed conveyed an interest to ICMM as a co-tenant because the deed conveyed the property to “Unity Community, an organization of International Christian Music Ministry.” The St. Clair Circuit Court granted summary disposition to plaintiff, finding from the deposition of ICMM President Kenneth Wilson that ICMM and Unity Community were different entities and the deed did not create a tenancy in common.

The panel’s original decision reversed the St. Clair Circuit Court’s order based solely on its decision regarding the issue of whether the St. Clair Circuit Court properly declared an order of Wayne Circuit Court to be null and void. The Supreme Court reversed this panel’s judgment on that issue stating that the St. Clair Circuit Court had plenary authority pursuant to MCL 600.2932 to vest title in plaintiff, and remanded for reconsideration of the other issues. We now turn to the remaining issues.

II. STANDARD OF REVIEW

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(7), (9) and (10). The panel originally reviewed the matter under (C)(10), as the trial court considered matters outside the pleadings. A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). This Court will review a decision on a motion for summary disposition de novo as a matter of law. *Spiek v Dept of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

III. ANALYSIS

Defendants argue that the circuit court erred in making a factual determination that ICMM was not a grantee of an interest in the 1993 conveyance. Defendants assert that there was a question of fact that could not be resolved in a summary disposition motion. We disagree.

The court, and not a jury, is the finder of fact in an equitable action to determine an interest in land. Defendants failed to present evidence to rebut plaintiff’s evidence that the 1993 deed conveyed an interest to a single party. The trial court properly granted summary disposition as a matter of law where defendants did not satisfy the legal requirements for establishing a transfer of real property.

Defendants argue that there is a factual issue concerning whether the 1993 deed conveyed an interest to ICMM. If the deed gave an interest to ICMM in 1993, then plaintiff’s mortgage would not have priority over defendants’ recorded interest that existed prior to the mortgage. MCL 565.29. Defendants rely solely on the language of the deed, which conveys the property to “Unity Community, an Organization of the International Christian Music Ministry, Inc.” Defendants assert that this language created a tenancy in common under MCL 554.44. The trial court rejected this claim, noting that Dr. Kenneth Wilson, the president of ICMM, testified in his deposition that ICMM and Unity Community are two separate entities. In an affidavit filed in the Wayne County action, Wilson stated that Unity Community has never been a part of ICMM, the organizations have different tax identification numbers, and that ICMM provided temporary

501c(3) non-profit umbrella coverage only during the time period in which Wilson was assisting Unity Community in applying for their own tax exempt status from the IRS. The court noted that the language of the deed did not use the conjunctive phrase “and” thus plaintiff was not put on notice that another entity had an interest in the property. The trial court also found that the Wilson deposition made it clear that ICMM had no legal or equitable interest in the property. The purchase funds came entirely from Unity, the deed was returned to Unity, and Unity’s president resided at the property and paid all property taxes.

The plain language of the 1993 deed did not indicate that two separate entities had an interest in the property. Defendants failed to present evidence to show that a genuine material issue of fact existed as to its interest in the subject property; thus, the trial court properly granted summary disposition to plaintiff.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Richard A. Bandstra

/s/ Bill Schuette